



Administrator's Decision on Rural Health Care Program Appeal

Via Electronic and Certified Mail

August 20, 2013

Mr. Bill Lehner
Director of IT
Amery Regional Medical Center
265 Griffin Street E.
Amery, WI 54001

Re: Amery Regional Medical Center; HCP #13041;
Funding Request Numbers: 62296, 62297, 62298, 62299, 62300, and 63573;
Request for Reconsideration of Commitment Adjustment

Dear Mr. Lehner:

The Universal Service Administrative Company (USAC) has completed its evaluation of your letter of appeal, dated May 2, 2013, you submitted on behalf Amery Regional Medical Center (Amery, or applicant) for Funding Year 2011. Amery requests that USAC reconsider the Rural Health Care Division's (RHCD) Commitment Adjustments (COMAD) for Funding Year 2011. USAC's COMAD was based on a violation of the competitive bidding requirements under Section 54.603 of the Federal Communications Commission's (FCC) rules.¹

Decision on Appeal and Explanation: Denied

Pursuant to the FCC's competitive bidding requirements, a health care provider (HCP) in search of telecommunications services eligible for universal service support must submit to USAC a properly completed FCC Form 465 *Description of Services Requested & Certification Form*.² After USAC posts the Form 465 on its website, the HCP must wait 28 days before contracting with a telecommunications carrier.³ Telecommunications services rendered based on contracts signed before the close of the 28-day period are therefore ineligible for universal service support. RHCD refers to the end of the 28-day waiting period as the Allowable Contract Signature Date, or ACSD.

Amery submitted its FCC Form 465 on April 14, 2011. The form was posted the same day. The ACSD was therefore May 12, 2011.

¹ 47 C.F.R. § 54.603.

² 47 C.F.R. § 54.603(b)(1).

³ 47 C.F.R. § 54.603(b)(3).

The applicant submitted six FCC Form 466 *Funding Request and Certification Form*, packets on April 26, 2012.⁴ All forms requested funding for MPLS service, and indicated that the service was charged on a month-to-month, or non-contract, price.⁵ Amery later delivered to RHCD a pricing schedule for all packets which validated the data on the forms.^{6,7} Following the delivery of the pricing schedule, RHCD processed the packets, and issued Funding Commitment Letters (FCL) to Amery on June 21 and July 26, 2012.⁸

On August 29, 2012, in response to a request for rate documentation from RHCD about another packet, Amery delivered a contract from service provider Norlight.⁹ Upon review of the contract, RHCD determined, based on the services offered and their respective locations, that the contract covered the same services for which funding was requested on the packets discussed herein.¹⁰ The contract was signed by Amery on April 18, 2011.¹¹

Because the contract signature date was within the 28-day bidding period following the applicant's Form 465 posting, RHCD emailed Amery to request clarification.¹² The applicant did not respond to emails sent on October 2 and October 12, 2012 asking the applicant to explain why it had signed a contract during the 28-day bidding period. Since signing a contract for services during the competitive bidding period violates program rules, the previously issued FRNs were no longer appropriate. As such, RHCD issued COMADs for the FRNs on May 2, 2013. The COMAD letters stated that, because of a violation of program rules, RHCD would adjust the funding amounts previously communicated in the FRNs. The applicant would not receive any of the requested funding.

On May 2, 2013, the applicant appealed the COMADs. In the letter of appeal, the applicant admits to signing the contract for services within the 28-day bidding period, and states: "It was unfortunate and random that the final day to sign with Windstream¹³ to have an agreement begin 7/1/2011 happened on 4/18/2011 – between the subsequent period's (FY 2011) 465 open bid period of 4/14-5/11."¹⁴

⁴ FCC Form 466s submitted by Amery, Packet #s 1105090, 115089, 115092, 115099, 115101, and 115095 (April 26, 2012) (Amery Packets).

⁵ *Id.* at Lines 17 and 31.

⁶ Email from Tara Rudolph to USAC (June 8, 2012, 4:53 p.m.).

⁷ Instructions to FCC Form 466, 10 (Nov. 2011). "The applicant must submit the required documentation of the service or cost."

⁸ Funding Commitment Letter from USAC to Amery, FRN #s 62296, 62297, 62298, 62299, 622300 (June 21, 2012), and FRN #63573 (July 26, 2012).

⁹ Email from Tara Rudolph to USAC (Aug. 29, 2012, 4:44 p.m.).

¹⁰ Norlight Communications Services Agreement, at 1 (April 12, 2011).

¹¹ *Id.* at 2.

¹² Email from USAC to Bill Lehner (Oct. 2, 2012, 11:09 a.m.) and (Oct. 12, 2012, 5:44 p.m.).

¹³ Windstream. (2010). Norlight was acquired by Windstream. [Press release]. Retrieved from http://news.windstream.com/article_display.cfm?article_id=1259.

¹⁴ Letter of appeal, at 2.

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By signing the contract before the ACSD, Amery violated the FCC's competitive bidding rules; and USAC correctly appropriately adjusted the FRNs. Therefore, this appeal is denied.

If you wish to appeal this decision, you may file an appeal with the FCC pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

www.usac.org/rhc/about/program-integrity/appeals.aspx

Sincerely,

/s/ USAC